

LAW AND JUSTICE

343

even dead, on the ground. The victor was not punished, and in some cases he also inherited the property of his unfortunate opponent.¹ 695

Another resort sometimes employed was divination. If the council was unable to decide the guilt of a person, the diviner, *ku aob*, was called in for assistance. He had with him two small strips of leather, *kura*, one with a copper bead, the other with an iron bead attached to the end. The former was regarded as male, the latter as female. These leather strips the diviner beat on the fist of his hand or on the ground, at the same time invoking the oracle with the words: *mi, mi, amae mi, homits gao, ota mi ais /na khau tsi!* "Tell, speak, tell the truth, if you lie, then I will burn you in the fire!" Then he jerked the strips from his hand into the circle formed about him by the council with the litigants or the accused. The ends to which the beads were attached had to point towards the culprit. Wandres explains the working of this method by the firm belief which the Naman even at the present time have in this oracle. The diviner, a skilled reader of men, carefully observes the litigants or the accused while busy with his strips. The real culprit, like all the others, believes in the efficacy of the oracle, and therefore cannot hide his apprehensions, with the result that the diviner can readily recognize his man, and with a twist of his hand divert the strips towards him.² 787

The main penal sanctions among the Naman are flogging, fines, and death. A sentence of death can nowadays only be passed by the European administration and its duly-constituted law courts, to which all cases involving it must be referred. Punishment in the native courts is therefore confined to flogging and to fines payable as a rule in goats. There are no fixed rules for the degree of punishment, but certain pragmatic principles are observed. Offences against the community are more severely punished than those against individuals. Accidental misdeeds are not regarded as crimes; but unsuccessful attempts meet with punishment, while self-defence, although not sufficient ground for acquittal, produces amelioration of the sentence. Incurable offenders are expelled and their property confiscated; in the old days they might even be killed. The confirmed cattle thief has to expect harder punishment at every conviction, until ultimately the death sentence would formerly have been decided upon; nowadays the matter is then referred to the law courts of the Europeans. 681

¹ Op. cit., 272-3; cf. Hahn, *Tsimi-Goon*, 105-6.

² Op. cit., 273. [673]

LAW AND JUSTICE

345

and formerly they could even escape the death sentence for murder by a payment of cattle to the chief. But the possible shielding of murderers in this way always exposed them to the blood feud. If, through favouritism or for political reasons, a murderer was acquitted by the council, the nearest relative of the victim had the right to take the law into his own hands and to kill him. 681
696

Blood vengeance, *//kharab*, for the death of a near relative was a sacred duty to the Hottentots.¹ A son avenged the death of his father, a brother his brother, and if there was no son to take vengeance for the death of a woman her husband was obliged to do so. Killing in such a case was no crime, and neither the chief nor the council had the right to intervene and punish the avenger for his act. The case is cited of the well-known traveller and explorer Charles John Andersson, who about 1861 shot an Afrikaner Hottentot near Windhoek in what he alleged was self-defence. He reported the matter to the chief Jonker Afrikaner, and as a result was brought before the chief and tribal council for trial. The council, after hearing the evidence, was satisfied, rightly or wrongly, that Andersson had exceeded his rights and had gone too far. But in view of the fact that he was a European and a British subject, the chief was reluctant to punish him. So, "I release you," said Jonker, "but," he added, "according to our law the brother of Hartebeest will kill you and must kill you, so flee for your life."² 628
[673] •

In all probability the blood feud was formerly very extensively practised, especially in connection with the clan organization. We know from accounts left us by travellers among the Nama in the early part of last century that at that time the vendetta was still in full force among them, and the chief was unable in the interests of the tribe as a whole to prevent two clans from carrying out vengeance one on the other, or to force them to accept compensation. Alexander gives an account of such a vendetta among the Bondelswarts when he was travelling among them in 1836, and in the Rhenish Mission Record for 1856 there is an account of another vendetta at Bethanie among the !Aman Hottentots.³ According to Wandres the feud ceased when revenge for the death had been taken, but other accounts imply that it was kept up as a continuous vendetta. Hahn states that

¹ Hahn, "Die Nama-Hottentotten," 306; Wikar, op. cit., 134; Kohler, loc. cit.; Wandres, op. cit., 276.

² Report on the Natives of S.W.A., 74.

³ Hoernlé, "Social Organization of the Nama," 16, quoting Alexander, op. cit., I, 187, cf. 221; and Bericht der Rheinischen Mission, 1856, p. 274.

[681] cuts with a stick until ultimately, in the olden days, the death
 [685] sentence was decided upon. At the present time, the matter
 is then referred to the law-courts. In the case of corporal
 punishment the sentence was usually based on the principle
 of: Eye for an eye and tooth for a tooth—unless the parties
 [682] agreed upon another form of indemnity. Murder, high
 [687] treason, attempted murder of the chief and incest were always
 [684] punished with death according to the deposition of the old
 people. For the execution of corporal punishment a bailiff
 was appointed and fines were collected by the magistrate.

- 673 6. Generally they regard disrespectful behaviour towards
 the old, murder, homicide, bodily injury, theft, illegitimate
 impregnation and treason as punishable offences.

Lies and perjury are also deemed improper, but are not
 [835] subject to legal punishment. In the same way adultery is
 not punishable. Incest becomes a case for the law only when
 the father refuses to be responsible for the sustenance of the
 child during its first years, namely, the time when it needs
 [388] the nursing of the mother. As soon as the child is five years
 of age, the father takes it and the payments, which as a rule
 were in cattle and to-day are in money, cease.

It cannot, however, be said that these forms are valid every-
 where where there are still unbroken Nama tribes ruled by a
 chief; and although they still know their old laws, they do
 not avail themselves of them in every case.

- 421 7. The proprietary rights of the old Nama were not exten-
 sive, and those of the present generation are still more limited
 as a result of the fact that they hardly possess any lands.
 Generally speaking we may say that the individual possesses
 nothing but is the usufructuary of what the family possesses.
 This even includes clothes and things for daily use.

- 422 Under personal property one understands the possession of
 cattle. A child even may receive one or more goats from his
 father and he uses their milk. He has the right to milk
 such goats without permission and their progeny are his
 property. Where natural conditions make it possible every
 person—man, wife, child—possess a few goats, sheep or even
 cattle. When these are to be sold it becomes manifest that
 this personal property continues to be regarded as family
 property, because in such cases, the whole family and not
 the individual decides whether there should be a sale or not.

- 423 The land or their tribal territory can under no circumstances
 become the property of an individual, neither is it the pro-
 perty of the chief. He has not got the right to dispose of or
 to give away anything of the territory which, in all respects,
 is regarded as common tribal property, unless the money
 received be divided amongst the families of the tribe, after
 they have consented to such a sale. The boundaries of a
 tribal territory, however, are not fixed. All lands and
 grounds where members of a tribe have previously grazed